

October 9, 2007

To: UST Certified Contractors

The purpose of this communication is to provide you with the current status of Underground Storage Tank Branch (USTB) reviews for ranked facilities, and to offer guidance to expedite the process for reimbursement from the Petroleum Storage Tank Environmental Assurance Fund under the new regulations in 401 KAR Chapter 42.

Over the past eight months, the USTB has initiated the review and the issuance of written directive letters for all Rank 1 and Rank 2 facilities, and site investigation reviews for Rank 3 facilities have been on-going for the past six weeks.

In addition, those facilities that have defined the extent of contamination are being moved into the corrective action phase for remedial work, and have been or will be issued written directives. Most facilities, already within the corrective action phase, have received written directives for the re-sampling of areas indicating past confirmed contamination. These actions will be followed up with directives for corrective action plans or other remedial actions.

The following guidelines are offered to clarify the regulatory requirements in 401 KAR Chapter 42, and to assist certified contractors in expediting the reimbursement process:

Fixed-cost Directives:

- A signed worksheet shall be submitted with the technical report in response to a fixed-cost directive. The worksheet serves as the claim for reimbursement, and is required for the processing of reimbursement. These worksheets are completed by the USTB, attached to the written directive, and shall be signed by the tank owner/operator seeking reimbursement and by the certified contractor to initiate reimbursement. Be advised that “Limited Power of Attorney” status does not relieve the requirement that the tank owner/operator sign the worksheet along with the certified contractor.
- The fixed cost and the actions identified on the worksheet, completed by the USTB, shall not be modified by the tank owner/operator or by the certified contractor.
- The backup documentation required under the previous regulations for Time & Material claims is no longer necessary for the reimbursement of a fixed-cost directive. The previously required claim form, invoice listing form, invoices and other documentation (time sheets, itemized personnel breakdowns, lab invoices, etc.) are no longer required for the reimbursement of a fixed-cost directive.
- Refer to the instructions on the specified worksheet for clarification regarding any additional information required for reimbursement.
- Other miscellaneous items such as drum disposal may be submitted as a separate claim on the “Miscellaneous Worksheet” (DEP6066H/08/06) as an attachment to, or as a separate action from the submittal of a technical report.
- When the sampling of an existing monitoring well is required in a fixed-cost directive, but is not possible due to the well having been destroyed or the inability of the certified contractor to locate the well, the certified contractor shall provide an explanation of the attempts made to locate the well or to describe the condition of a damaged or destroyed well. In these situations, the initially established fixed cost will be reimbursed contingent upon the submittal of an adequate explanation.
- If off-site sampling is directed, it is the responsibility of the certified contractor to verify that any existing off-site access agreements are secured prior to field mobilization. Reimbursement for acquiring an off-site access agreement is allowed for by utilizing the “Miscellaneous Worksheet” (DEP6066H/08/06).

Directives Issued Without a Fixed Cost:

- In response to a written directive that does not include a fixed cost, the certified contractor shall submit a cost estimate to complete the actions directed by completing the appropriate worksheet. The appropriate worksheet to be completed is identified in the written directive letter.
- The worksheet shall be completed, and will serve as the cost estimate. This cost estimate shall be approved in writing by the USTB prior to performing the work in order to receive reimbursement.
- Upon written approval by the USTB of the cost estimate submitted, field work may begin.
- When the field work is completed, the technical report is compiled, and the required documentation for eligible reimbursement is submitted as an attachment to the report. The provisions of 401 KAR 42:250 Section 9 through Section 13 specify the required documentation necessary for reimbursement.
- The documentation necessary for reimbursement includes a claim form, invoice listing form, affidavits and waivers form, etc. In addition, the specified worksheet shall be completed to document the actual actions performed. Please refer to the instructions on the specific worksheet to identify the required information for the reimbursement of costs.
- Those items that fall under (a), (b), (c) and (g) within Section 15 of 401 KAR 42:250 do not require cabinet pre-approval of costs.
- Directives issued that require the submittal of a Corrective Action Plan have included a fixed cost for “reporting”, but will not include a worksheet. These directives included language providing instructions on the information necessary for reimbursement. To date, a number of facilities under this scenario have not submitted the required supporting documentation, and reimbursement is pending the submittal of the required information.
- Any directive or “No Further Action” letter, issued **prior** to September 13, 2006, shall follow the reimbursement procedures in 401 KAR 42:280 and contractor costs in 401 KAR 42:310.
- The requirements of 401 KAR 42:314; 401 KAR 42:316 and 401 KAR 42:340 (company, contractor and laboratory certification) must also be followed in order to receive reimbursement.
- A significant number of written directives are on hold pending the submittal and approval of an Application for Assistance (AFA). It is requested that certified contractors assist those tank owner/operators in need of submitting and AFA in expediting that process.

NOTE: Most directives require the submittal of comprehensive historical soil and groundwater data tables, as required in the Site Investigation Outline and Corrective Action Plan Outline. The purpose for assembling all the historical data is so that the contractor and the regulator can quickly assess what additional action will be proposed and directed. It is critical that all data be considered prior to a certified contractor proposing additional actions and before the cabinet’s approval of those actions.

SOTRA and Permanent Closure:

- If permanent closure is performed after September 13, 2006, SOTRA applicants shall complete and submit the new SOTRA claim form, SOTRA Claim Request (DEP6068/01/06).
- The appropriate Closure Outline to be followed for permanent closure requirements is determined by the date of the Notice of Intent (NOI) submittal. If the NOI is submitted after September 13, 2006, the new Closure Outline (August 2006) is to be followed.
- Be advised that, unless bedrock is encountered and a floor sample cannot be obtained (Closure Outline – Section 3.1.2), the new Closure Outline (August 2006) does not authorize down-gradient groundwater assessment without a specific written directive, and those costs are not reimbursable unless directed in writing by the cabinet.
- Certified contractors are encouraged to evaluate the viability of the “Optional Soil Removal Outside of the Excavation Zone” provision as described in Section 2.7 of the new Closure Outline (August 2006). This provision was established to promote expedited removal and disposal of contaminated soil at the time of permanent closure, and will allow some facilities to complete the process of achieving No Further Action status in a more streamlined manner. Reimbursement to eligible tank owner/operators will be made in accordance with the unit rates listed in the Contractor Cost Outline for those items identified on the “Instructions” page of the Over-Excavation Worksheet (DEP6066E/08/06), incorporated within 401 KAR 42:250. This reimbursement does not require pre-approval, however, an AFA shall be submitted after the permanent closure to authorize reimbursement if the facility is not participating in SOTRA.

Funding and Certification:

Adequate funding is available through July of 2008 for the reimbursement of directed actions, and the USTB will be issuing written directives as quickly as possible. Diligent efforts by the certified companies to maximize productivity in completing these directives by the respective due date identified on each written directive will play an important role in securing upcoming budget appropriations sufficient to meet future needs.

Given the high volume of work being initiated, it is imperative that all certified companies maintain both company and individual certification to ensure that eligible reimbursement for directed work may be processed without delay. The USTB has begun a process of notifying individual certified contractors when their expiration date is approaching, however a number of companies or individuals have not renewed their certification. Any costs incurred by a company or individual that is not certified, or that has allowed their certification to expire, will not be eligible for reimbursement.

USTB staff will process the review of submitted technical reports as a priority for the purpose of making a “technical completeness” determination. As this determination initiates the reimbursement process, it is anticipated that certified contractors should realize more timely reimbursement of eligible costs if reports are submitted with all required information.

If you have questions, or need additional clarification, please contact the USTB at (502) 564-5981 or 800-928-7782.